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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/558,092	11/23/2005	Peter Depew Fiset	043844-0106	2229

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EXAMINER	
FARAH, AHMED M	

ART UNIT	PAPER NUMBER
3735	

MAIL DATE	DELIVERY MODE
08/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/558,092	FISET, PETER DEPEW	
	Examiner	Art Unit	
	Ahmed M. Farah	3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/23/05;6/28/06; and 9/28/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 58-77 of copending Application No. 10/591,690. Although the conflicting claims are not identical,

they are not patentably distinct from each other because they are directed to analogous phototherapy apparatuses and methods of use, the apparatus comprising a chamber and light emitting device disposed within the chamber, the light emitting device comprising a nanostructure or nanowire light emitting device.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-6 and 13-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Doty et al. US Patent No. 5,374,825 in view of Lieber et al. US Patent No. 7,254,151.

Doty et al. disclose a tanning device comprising: a chamber adapted for receiving a human subject to be tanned, and a plurality of light sources for emitting UV light onto the subject's skin.

Claims 2-4 and 14-16 are directed to intended use of the device. The recited claims languages are devoid of any structural and/or functional limitations and, therefore, are not given any patentable weight.

With respect to claim 20, the recited claim language lacks a step, which manipulatively affects the method for treating lupus. The court decided that "[T]o be entitled to weight ... structural limitations must affect method in a manipulative sense and not amount to mere claiming of use of a particular structure." Exparte Pfeiffer 782 O.G. 639, 1962 CD 408 (also, see 135 USPQ 31).

Doty et al. do not teach the use of nanostructure device for emitting the UV light as claimed. However, the use of a nanostructure or nanowire element/device pumped by UV light source to generate a narrowband light in the UV range is known in the art. Lieber et al. teach the use of nanowire, which produces UV light when it is pumped/ excited with UV light of about 370 nm.

Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to use a nanostructure device/element pumped with short wavelength UV light to produce a longer wavelength UV light for tanning the skin of the subject. The use of nanostructure element to shift shorter wavelength UV light such as UVC or/or UVB, to a longer UVA light would reduce exposure of damaging shorter UV wavelengths to the subject's skin.

3. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dotty et al. in view of Lieber et al. as applied to claims 1-6 and 13- above, and further in view of Salansky et al. US Patent No. 6,494,900.

Neither Dotty et al. nor Lieber et al. teach a method of treating Lupus with UV light. However, Salansky et al. teach that the use of UV light for treating lupus was

known in the art since the early 19th century (see col. 1, lines 16-21). Therefore, at the time of the applicant's invention, it would have been obvious to one of ordinary skill in the art to modify Dotty et al. in view of Lieber et al., and in further view of Salansky et al. in order to use the UV light source for treating lupus. Since the use of UV light for treating lupus is known in the art, it would have been obvious to use a nanostructure element to shift shorter wavelength UVC or/or UVB light to a longer UVA light in order to reduce exposure of damaging shorter UV wavelengths to the subject's skin.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M. Farah whose telephone number is (571) 272-4765. The examiner can normally be reached on Mon, Tue, Thur and Fri between 9:30 AM 7:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marmor II Charles can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ahmed M Farah/
Primary Examiner, Art Unit 3735

August 15, 2008.